SINGAPORE REPORTS

TAN AH LAM v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) April 25, 1978]

[Singapore — Criminal Appeal No. 6 of 1977]

Misuse of Drugs — Controlled drug — Trafficking in — Possession of 292.6 gms. of diamorphine — Appeal against conviction — Misuse of Drugs Act, 1973, s. 16(1) & (2).

Criminal Law and Procedure — Controlled drug — Trafficking in — Conviction for possession of 292.6 gms. of diamorphine — Whether trial judges had given adequate consideration to evidence of appellant — Misuse of Drugs Act, 1973, s. 16(1) & (2).

The appellant in this case together with two other passengers in a taxi entered Singapore from Johore Bahru. At the customs checkpoint, a customs officer noticed that his trousers were bulging and he touched both pockets. The customs officer asked the appellant to take out the contents of the right trousers pocket. The appellant took out a parcel found to contain 20 plastic packets of whitish powder. The appellant said that it was "obat" which means medicine in the Malay language. He was arrested and brought to the customs office at Woodlands where he took out from his left and rear trousers pockets two more parcels. The latter parcels contained another 24 plastic packets of whitish powder and brownish solid. On analysis they were found to contain 292.6 grams of diamorphine. The appellant claimed that he was unaware that the three parcels contained diamorphine. He believed that they contained powder for whitewashing and said that they were given to him by his friend for delivery to Singapore.

The trial judges rejected his evidence. They found that he had not succeeded in rebutting the onus cast upon him of rebutting the presumptions raised against him by virtue of section 16 of the Misuse of Drugs Act 1973.

Held, dismissing the appeal: it was a clear case, on the evidence and the findings of fact by the trial judges, of trafficking in Class 'A' controlled drug, diamorphine and as the quantity of diamorphine exceeded beyond doubt 15 grams, the sentence of death was mandatory.

COURT OF CRIMINAL APPEAL.

Mak Kok Weng for the appellant.

Abdul Wahab Ghows (Solicitor-General) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): We dismissed the appeal of Tan Ah Lam, the appellant, who was convicted by the High Court and sentenced to death on the following charge:—

"You, Tan Ah Lam, are hereby charged that you on or about the 12th of June, 1976 at about 10.20 a.m. in a Singapore registered taxi No. SH 4377 at Woodlands Customs Checkpoint, Singapore, did unlawfully traffic in a controlled drug specified in Class 'A' of Part I of the First Schedule of the Misuse of Drugs Act, 1973 (No. 5 of 1973), to wit, 292.6 grammes of diamorphine (heroin) and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act, 1973 punishable under section 29 of the aforesaid Act."

We now give our reasons.

At about 10.20 a.m. on June 12, 1976 a taxi No. SH 4377 with three passengers, one of whom was the appellant, entered Singapore from Johore Bahru, West Malaysia. The taxi pulled up at the Woodlands Customs Checkpoint for the usual customs inspection. A customs officer noticed that the trousers pockets of the appellant, who was seated in the rear of the taxi, were bulging and he touched both pockets. He asked the appellant to take out the contents of the right trousers pocket. The appellant took out from that pocket a parcel wrapped in a newspaper. The appellant was told to open the parcel which he did. Inside the parcel were 20 plastic packets, each containing whitish powder. When asked what the whitish powder was the appellant replied "obat". The word "obat" is a Malay word which in English means medicine.

The customs officer, suspecting the whitish powder to be heroin (diamorphine) arrested the appellant and seized the contents of the newspaper wrapped parcel found in the appellant's right trousers pocket. The appellant was taken to the Customs office at Woodlands where he took out from his left trousers pocket a parcel and from his left rear trousers pocket another parcel both of which were similarly wrapped in newspaper. The parcel taken from the left trousers pocket contained 20 plastic packets, each containing whitish powder and the parcel taken from the left rear trousers pocket contained 4 plastic packets, each containing a brownish solid. The total weight of the 44 plastic packets of whitish powder and brownish solid was 550 grams which on analysis were found to contain 292.6 grams of diamorphine (heroin). Diamorphine (heroin) is a controlled drug specified in Class A in Part I of the First Schedule of the Misuse of Drugs Act, 1973.

These facts were not disputed by the appellant at the trial. His defence was that he was unaware that the three parcels in his possession contained diamorphine but believed they contained powder used for whitewashing. He said that he had been given the three parcels at the Penang Railway Station by a friend, Ah Heng, who was a contractor engaged in whitewashing buildings, for him to take them to Singapore. At Singapore he was to await the arrival of Ah Heng and to meet Ah Heng outside the White House Hotel in Singapore when Ah Heng would give him $100 for his help in taking the three parcels to Singapore. He said that Ah Heng told him, when handing the three parcels to him, that they contained powder for whitewashing and also told him not to unwrap the parcels.

The trial judges, not surprisingly, rejected the appellant's evidence that he believed Ah Heng and thought that the three parcels contained powder used for whitewashing. They found that he had not succeeded in rebutting the onus cast upon him of rebutting the presumptions raised against him by virtue of section 16 of the Misuse of Drugs Act, 1973. Sub-section (1) of section 16 provides that any person who is proved to have had in his possession or custody or under his control anything containing a controlled drug shall, until the contrary is proved, be presumed to have had such drug in his possession. Sub-section (2) of section 16 provides that any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of such drug.

It was contended before us on behalf of the appellant that the trial judges failed to give adequate consideration to the evidence of the appellant and rejected the defence without giving adequate reasons therefor. We rejected this contention as being with-

out any substance whatsoever. The trial judges found that the appellant was not speaking the truth as to how he came to be in possession of the three parcels he was carrying in his person in the taxi which took him from Johore Bahru to Singapore and as to his belief that the three parcels contained powder used for whitewashing purposes.

Next, it was contended that the conviction cannot be supported having regard to the evidence. No reasons were advanced before us because, we suspect, none worth advancing, could be found. It was a clear case, on the evidence and the findings of fact by the trial judges, of trafficking in a Class A controlled drug, diamorphine. As the quantity of diamorphine exceeded, beyond doubt, 15 grams, the sentence of death was mandatory. Accordingly, we dismissed the appeal.

Appeal dismissed.

Solicitors: *A.S.K. Wee.*

LEE KAY GUAN & ANOR. v. PHOENIX HEIGHTS ESTATE (PTE) LTD.

[C.A. (Wee Chong Jin C.J., Chua & D'Cotta JJ.) November 24, 1978]

[Singapore — Civil Appeal No. 57 of 1977]

Land Law — Contract to purchase a house — Developers' failure to give Notice to Complete — Developers blamed competent Authority for delay — Purchasers' refusal to occupy house unless title issued — Purchasers claimed liquidated damages for breach of contract from date appointed by Controller of Housing to date of issue of Certificate of Title — Not a penalty when liquidated damages are not excessive.

Damages — Liquidated damages — Burden of proof.

Contract — Purchase of house — Breach of contract — Claim for liquidated damages of — Date of completion stipulated in agreement — Delay in completion due to late issuance of Certificate of Title — Claim for liquidated damages from agreed date of completion to date of issuance of Certificate of Title.

Housing Developers — Developers' failure to give Notice to Complete — Purchasers' refusal to occupy house unless title issued — Damages — Liquidated damages.

This was an appeal from the decision of Choor Singh J. reported at [1978] 2 M.L.J. 47. The appellants entered into a contract to purchase a house. The contract provided that it should be completed before June 30. 1973. The contract also provided that if the respondents failed to complete they would pay the appellants liquidated damages from the appointed date to the date when notice to complete was actually given. The house was finally completed in November 1974. On November 28, 1974 the building authority issued a Temporary Occupation Licence for the house to be occupied by the purchasers/appellants. The latter refused for some reason to occupy the house until April 17, 1975. They claimed liquidated damages. The respondents admitted liability for damages up to the date of issuance of T.O.L. The issue in the court below was whether they were liable to liquidated damages for the period November 28, 1974 to December 8, 1975 when the respondents gave to the appellants the requisite Notice to Complete. The High Court dismissed the claim.

Held: (1) the contract between the parties was similar to a building contract. The contract contained a definite date from which liquidated damages for delay in giving a notice to complete were to run. The provision in question, having regard to all the terms of the contract, was clearly a genuine pre-estimate of the loss which was likely to flow from a breach of the contract and accordingly was recoverable without proof of the actual loss suffered;

(2) the fact that it was difficult to ascertain the loss caused to the purchaser by delay in giving a notice to complete indicated that the provision to pay a sum as specified in the relevant clause of the Agreement was in the nature of liquidated damages so long as the sum specified as payable was not excessive.

COURT OF APPEAL.

Cheng Tim Pin for the appellants.

Peter Guok for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: On January 6, 1973 the parties entered into an agreement for the sale and purchase of a building plot in a building estate then being developed by the respondents together with a detached bungalow in the course of erection thereon at the price of $180,000. The material provisions of the agreement read as follows: —

"Clause 3. The purchase price shall be paid by the Purchaser to the Vendor by the instalments and at the times following, that is to say:—

(a) Immediately upon the signing of this Agreement a sum equivalent to 10% of the purchase price such sum to include the booking fee if any paid.

(b) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the foundation work of the building has been completed a sum equivalent to 10% of the purchase price.

(c) Within fourteen (14) days after, receipt by the Purchaser of the Vendor's notice in writing that the reinforced concrete framework of the building has been completed a sum equivalent to 15% of the purchase price.

(d) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the brick walls of the building with door and window frames in position have been completed a sum equivalent to 15% of the purchase price.

(e) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the roofing and internal plastering of the building have been completed a sum equivalent to 15% of the purchase price.

(f) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the electrical wiring and plumbing (without fittings) to the building have been completed a sum equivalent to 10% of the purchase price.

(g) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the Vendor's Architect has certified that the roads and drains serving the building have been completed a sum equivalent to 15% of the purchase price.

(h) On completion of the sale and purchase herein as hereinafter provided and on delivery to the Purchaser of vacant possession of the property sold the balance of 10% of the purchase price, 5% of which shall forthwith be paid to the Vendor and the remaining 5% shall be paid to the Purchaser's solicitors as stakeholders to be paid to the Vendor only on production of the Certificate of Fitness for Occupation of the Chief Building Surveyor in respect of the building.

Every such Notice shall be supported by the requisite certificates of the Vendor's Architect and shall be accepted without objection or enquiry as conclusive of the fact that the works therein referred to have been completed.

Clause 10. The Vendor shall at its own cost and expense obtain the approval of the Competent Authority under Section 9(3) of the Planning Act, Cap. 279 of the 1970 Revised Edition for the subdivision of the property sold but any delay in obtaining such approval shall not be a ground for any delay by the Purchaser in the payment on due date of any of the instalments of the purchase price hereinbefore referred to in Clause 3 hereof and the interest thereon (if any).

Clause 11. The sale and purchase herein shall be completed at the office of the Vendor's Solicitors Messrs. Guok & Ganesan of No. 11, D'Almeida Street, Singapore fourteen